

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 2, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 91, HB 374, 1/25/2005
Executive Action: HB 368-Tabled, HB 324, 326, 280-Do
Pass As Amended

HEARING ON HB 91

Sponsor: REP. CHRISTOPHER HARRIS, HD 66, BOZEMAN

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on HB 91, Prohibit open containers in vehicles. REP. HARRIS stated this bill is to, "...change a part of Montana's culture [that is] to drink and drive." He further stated, "Montana has the worst fatality rates in the nation for DUIs."

{Tape: 1; Side: A; Approx. Time Counter: 0 - 95}

Proponents' Testimony:

John Bohlinger, Lt. Governor, State of Montana, read the committee his statement. He finished his testimony by stating HB 91 has the, "...full support of the Schweitzer/Bohlinger Administration."

EXHIBIT(juh26a01)

{Tape: 1; Side: A; Approx. Time Counter: 95 - 141}

Jim Kembel, Montana Chiefs of Police, rose in support of HB 91.

{Tape: 1; Side: A; Approx. Time Counter: 141 - 147}

Jim Lynch, Montana Department of Transportation, spoke to the committee in support of HB 91. Mr. Lynch informed members of the committee that 37 other states in the United States have open container laws and the rest of the states have some sort of law regarding open containers.

He further stated that DUIs in Montana cost the state \$400 million and that 41% of fatal crashes in Montana have alcohol involvement.

{Tape: 1; Side: A; Approx. Time Counter: 147 - 290}

Brenda Nordlund, Assistant Attorney General-Motor Vehicle Division, spoke to the committee in support of HB 91. She stated that in the 1995 Legislative session, a bill passed the Senate but died in the House regarding open container. Then in 2003, a bill passed the Senate, but "died" in the House Judiciary Committee.

Ms. Nordlund spoke to the committee members about the minor arguments against this bill. These arguments are in reference to littering/recycling and the regulation in Title 16 that regulates alcohol sales.

She finished her testimony by saying that HB 91 is about two regulated environments: alcohol and automobiles.

{Tape: 1; Side: A; Approx. Time Counter: 290 - 405}

Bill Slaughter-Director-Department of Corrections, spoke to the committee about the legacy in Montana of "go-cups."

{Tape: 1; Side: A; Approx. Time Counter: 405 - 439}

Gary Forrester, Montana Contractors Association, spoke to the committee about the construction worker who was killed at a construction site in Billings due to a driver who had been drinking.

{Tape: 1; Side: A; Approx. Time Counter: 439 - 476}

Bill Muhs, MADD, rose in support of HB 91. He informed the committee that Montana and Mississippi have the highest fatalities due to alcohol-related accidents. **Mr. Muhs** continued his testimony to the committee and requested that an amendment to increase the fine to \$100 be added to this bill, stating that as an example, littering has a fine of \$500. He finished by stating that in a recent poll, 81% of Montanans favored an open container law.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 58}

Kristie Blazer, Montana Beer and Wine Wholesalers, rose in support of HB 91. She stated that last session her organization was opposed to an open container bill; however, this year with the amendment, they are supportive of HB 91.

{Tape: 1; Side: B; Approx. Time Counter: 58 - 91}

Geoff Feiss, Montana Telecommunications Associations, rose in support of this bill and stated that his organization does not support any mitigation of this bill and to keep HB 91 as written.

{Tape: 1; Side: B; Approx. Time Counter: 91 - 111}

Dan Hargrove, Montana Addiction Service Providers, rose in support of HB 91 and related a story to the committee about himself when he was in the U.S. Air Force.

{Tape: 1; Side: B; Approx. Time Counter: 111 - 125}

Mona Jamison, Boyd Andrew Community Services, rose in strong support of HB 91. She stated that drinking and driving is an "...infringement of the fundamental right to drive on roads that are safe."

{Tape: 1; Side: B; Approx. Time Counter: 125 - 140}

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support of HB 91.

{Tape: 1; Side: B; Approx. Time Counter: 140 - 154}

Kris Minard, self, rose in support of HB 91.

[EXHIBIT\(juh26a02\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 154 - 172}

Harris Himes, Montana Family Coalition, rose in support of HB 91.

{Tape: 1; Side: B; Approx. Time Counter: 172 - 177}

Dallas Erickson, Montana Family Coalition, rose in support of HB 91.

[EXHIBIT\(juh26a03\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 177 - 205}

Jeanne Poe, All Nations Ministry, spoke in support of HB 91.

{Tape: 1; Side: B; Approx. Time Counter: 205 - 225}

Jim Ahrens, Montana Hospital Association, rose in support of HB 91.

{Tape: 1; Side: B; Approx. Time Counter: 225 - 227}

Cheryl Leidle, Sheriff-Lewis and Clark County, rose in support of HB 91.

{Tape: 1; Side: B; Approx. Time Counter: 227 - 230}

Mike Tooley, Montana Highway Patrol, rose in support of HB 91.

{Tape: 1; Side: B; Approx. Time Counter: 230 - 238}

Opponents' Testimony:

John Iverson, self, rose in opposition of HB 91. Mr. Iverson spoke to the committee about the times that he and his friends have gone skiing and designated a driver when they have had alcohol in the vehicle. He and his group feel nothing is wrong with that scenario. He also believed that it is should be permissible to have the passengers drink alcohol in a car, but not the driver.

{Tape: 1; Side: B; Approx. Time Counter: 238 - 370}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. SONJU posed his questions to Mr. Lynch from the Department of Transportation (DOT). He was interested in the funding issue from the federal government; the amount of money involved and the possibility of jobs lost without this money.

Mr. Lynch explained that the \$5.6 million received from the federal government is now being allocated to the DOT for their "Safety" campaign. If Montana does not institute an open container law, that money will be distributed among other states for their highway construction projects resulting in a loss of many jobs in Montana.

REP. NOONAN queried Mr. Iverson briefly about if he would like to continue the ski trips he spoke about. **Mr. Iverson** responded in the affirmative.

REP. BECKER asked Ms. Blazer and **REP. HARRIS** if Montana sells 3.2% beer in Montana or 5% beer. The answer was, "Yes," to 3.2% and 5%.

REP. KOOPMAN questioned Mr. Lynch regarding the language of what a "crime" is defined as. Then followed up with several questions about the presumption of guilt and the correlation between open containers and fatalities on the highways. **REP. KOOPMAN** stated that he would like to have parking a car in front of a liquor store as a law so as to discourage the purchase of alcohol. **Mr. Lynch** (somewhat tongue in cheek) said that maybe it would discourage drinking and driving.

REP. KOOPMAN then began questioning Ms. Nordlund about the necessity to "send a message"; and how far to go to send that message?

REP. RICE then questioned Ms. Nordlund regarding the federal law and the money involved. **REP. RICE** then inquired about the protocol an officer would use in the arrest of someone suspected of drinking and driving regarding the language of "probable cause" versus "reasonable suspicion" in the arrest of the alleged offender. **Ms. Nordlund** replied that the protocol would be "particularized suspicion with an automobile." Further, then in order to get a conviction, that officer would need to be able to articulate the facts when in court about the alleged offender.

{Tape: 1; Side: B; Approx. Time Counter: 370 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 247}

Closing by Sponsor:

REP. HARRIS closed the hearing on HB 91 by stating that this bill is about changing behavior.

{Tape: 2; Side: A; Approx. Time Counter: 247 - 257}

HEARING ON HB 374

Sponsor: REP. CHRISTOPHER HARRIS, HD 66, BOZEMAN

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on HB 374, Increase drunk driving penalties when a person less than 16 years old was in the vehicle. The REPRESENTATIVE stated that this bill is about child endangerment with a DUI.

{Tape: 2; Side: A; Approx. Time Counter: 257 - 313}

Proponents' Testimony:

Gilda Clancy, Montana Eagle Forum, rose in support of HB 374.

{Tape: 2; Side: A; Approx. Time Counter: 313 - 322}

Harris Himes, Montana Family Coalition, rose in support of HB 374. Mr. Himes also stated that Dallas Erickson supports HB 374.

{Tape: 2; Side: A; Approx. Time Counter: 322 - 328}

Bill Muhs, MADD, spoke in support of HB 374.

[EXHIBIT\(juh26a04\)](#)

[EXHIBIT\(juh26a05\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 328 - 414}

Jacque Trude, self, rose in support of HB 374.

{Tape: 2; Side: A; Approx. Time Counter: 414 - 431}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. HARRIS closed the hearing on HB 374.

{Tape: 2; Side: A; Approx. Time Counter: 431 - 441}

EXECUTIVE ACTION ON HB 368

(REP. PARKER ABSENT DURING EXECUTIVE ACTION)

Motion: REP. MCGILLVRAY moved that HB 368 DO PASS.

Discussion:

Motion/Vote: REP. HARRIS moved that HB 368 BE AMENDED by DELETING LINES 14, 15, 16, 17. Motion carried by voice vote.

Motion: REP. HARRIS moved that HB 368 DO PASS AS AMENDED.

Discussion:

Mr. MacMaster stated to the committee that the bill is very different with this amendment. The committee discussed the bill is it stands now and if they need more clarification.

Motion/Vote: REP. KOOPMAN moved that HB 368 BE AMENDED to restore the bill BACK TO THE ORIGINAL FORM. Motion failed by voice vote.

Motion/Vote: REP. LANGE moved that HB 368 BE TABLED. Motion carried 15-3 by voice vote with REP. BECKER, REP. KOOPMAN, and REP. RICE voting no.

(REP. PARKER voting yes by proxy vote.)

{Tape: 2; Side: A; Approx. Time Counter: 441 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 393}

EXECUTIVE ACTION ON HB 324

Motion: REP. DRISCOLL moved that HB 324 DO PASS.

Discussion:

Motion: REP. DRISCOLL moved that HB 324 BE AMENDED with AMENDMENT 324-01.

EXHIBIT(juh26a06)

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Vote: Motion HB 324 be AMENDED WITH AMENDMENT 324-01 carried by voice vote.

Motion/Vote: REP. DRISCOLL moved that HB 324 DO PASS AS AMENDED. Motion carried 10-8 by roll call vote with REP. EVERETT, REP. KOOPMAN, REP. LANGE, REP. MCGILLVRAY, REP. RICE, REP. SONJU, REP. STOKER, and REP. WARD voting no.

(REP. PARKER voted yes by proxy vote.)

{Tape: 2; Side: B; Approx. Time Counter: 393 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 139}

EXECUTIVE ACTION ON HB 326

Motion: REP. STOKER moved that HB 326 DO PASS.

Discussion:

Motion: REP. STOKER moved that HB 326 BE AMENDED with AMENDMENT 326-01.

[EXHIBIT](#)(juh26a07)

Mr. MacMaster explained the amendment to the committee.

Vote: Motion carried unanimously by voice vote.

Motion: REP. STOKER moved that HB 326 DO PASS AS AMENDED.

Discussion:

The committee discussed the bill as it was amended.

Vote: Motion that HB 326 DO PASS AS AMENDED carried 15-3 by voice vote with REP. HARRIS, REP. KOOPMAN, and REP. MCGILLVRAY voting no.

(REP. PARKER voted yes by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 139 - 425}

EXECUTIVE ACTION ON HB 265

Motion: REP. LANGE moved that HB 265 DO PASS.

Discussion:

Motion: REP. LANGE moved that HB 265 BE AMENDED to STRIKE THE LANGUAGE ON LINES 19-21.

Discussion:

Mr. MacMaster explained the amendment to the committee.

Vote: Motion carried unanimously by voice vote.

Motion: REP. LANGE moved that HB 265 DO PASS AS AMENDED.

Discussion:

Motion: REP. CLARK moved that HB 265 BE AMENDED to STRIKE LIST OF OFFENSES.

Discussion:

Mr. MacMaster explained to the committee the amendment. After debate among the committee members, without objection, REP. CLARK WITHDREW HIS AMENDMENT.

Motion/Vote: REP. MCGILLVRAY moved that HB 265 BE AMENDED with a CONCEPTUAL AMENDMENT drafted by Mr. MacMaster regarding proximity. Motion carried by voice vote.

Substitute Motion/Vote: REP. NOONAN made a substitute motion that HB 265 BE TABLED. Substitute motion failed by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 265 BE INDEFINITELY POSTPONED. Motion carried 17-1 by voice vote with REP. GUTSCHE voting no.

(REP. PARKER voted yes by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 425 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 500}

EXECUTIVE ACTION ON HB 285

Motion: REP. EVERETT moved that HB 285 DO PASS.

Discussion:

Motion: REP. GUTSCHE moved that HB 285 BE AMENDED by STRIKING SECTION 7.

Discussion:

Mr. MacMaster explained the amendment to the committee.

Vote: Motion that HB 285 BE AMENDED carried unanimously by voice vote.

Motion: REP. GUTSCHE moved that HB 285 DO PASS AS AMENDED.

Discussion:

Motion/Vote: REP. WINDHAM moved that HB 285 BE AMENDED with a CONCEPTUAL AMENDMENT regarding IMMUNITY AND MONTANA RESIDENCY. Motion carried by voice vote.

Discussion:

The committee decided to postpone final action at this point.
{Tape: 4; Side: A; Approx. Time Counter: 0 - 206}

EXECUTIVE ACTION ON HB 280

(REPS. HARRIS AND LANGE ABSENT.)

Motion: REP. STOKER moved that HB 280 DO PASS.

Discussion:

Motion/Vote: REP. STOKER moved that HB 280 BE AMENDED REGARDING Page 1, Line 19. Motion carried by voice vote.

Discussion:

Motion: REP. NOENNIG moved that HB 280 BE AMENDED with a CONCEPTUAL AMENDMENT REGARDING PAGE 3, LINES 6-7, PAGE 4, LINES 12-13, PAGE 2, LINE 4. Motion carried by voice vote.

Motion/Vote: REP. STOKER moved that HB 280 DO PASS AS AMENDED.

Motion carried 16-2 by voice vote with REP. CLARK and REP.

GUTSCHE voting no.

(REP. PARKER, HARRIS, LANGE voted yes by proxy vote.)

{Tape: 4; Side: A; Approx. Time Counter: 206 - 500}

{Tape: 4; Side: B; Approx. Time Counter: 0 - 50}

ADJOURNMENT

Adjournment: 12:06 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh26aad0.TIF](#))